IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Bail Appl..No. 4704 of 2007()

CC.243/2005 of J.M.F.C.-II,NEYYATTINKARA

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(CRIME NO.14/2005 OF POOVAR POLICE STATION)

PETITIONER/ACCUSED:

ALI @ SAIDALI, S/O. ILLIAS,
E.M.S. COLONY, POOVAR DESOM, THIRUPURAM VILLAGE.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No. 4704 of 2007

Dated this the 3rd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Section 393 I.P.C. The crux of the allegations is that the petitioner attempted to snatch away a gold chain weighing two and a half sovereigns worn by the defacto complainant, a woman. The petitioner could not be arrested in the course of investigation. Investigation is complete. Final report has already been filed. Cognizance has been taken. The case has been registered as C.C.No.243/2005 before the Magistrate concerned.

2. According to the petitioner, he is absolutely innocent. The coercive processes issued by the learned Magistrate are chasing the petitioner. The petitioner is willing to surrender. He apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons

must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application for anticipatory bail is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-

//true copy// PA to Judge